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Dated: August 6, 2007 Electronic Signature for Ian R. Blum: /Ian R. Blum/

Docket No.: S0595.0078

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of:  
Deborah Chrisman et al.

Application No.: 10/034,369

Confirmation No.: 8707

Filed: December 28, 2001

Art Unit: 3623

For: System and method for scheduling and  
tracking retail store resets and remodels

Examiner: B. Vandoren

**RESPONSE TO EXAMINER'S ANSWER**

MS: APPEAL BRIEFS - PATENTS  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Appellants submit this reply to Examiner's Answer to specifically address the Examiner's response to arguments set forth in Section 10 of the Examiner's Answer.

I. CMS Does Not Teach or Suggest Automatically Determining a Labor Amount

In the CMS reference, the process for determining labor requirements are discussed as a manual one-on-one activity. Specifically, account managers determine the labor requirements using a customized case-by-case labor determination. The CMS material provides for individual attention to the merchandizing and detailing services. While it is not explicitly disclosed how these services are accomplished or administered, it is clear that account managers determine the amount of labor needed on a case-by-case basis, unlike automatically determining amount of said labor needed to perform said store activity explicitly recited in the claims.

The CMS materials indicate that the process for determining labor requirements is a custom process, individually developed, directed and supervised by the CMS account manager. See CMS page 4, section 1. Appellants respectfully submit that the customized one-on-one labor determination process described in the CMS material does not fall within the scope of the claimed term.

The section of the CMS material captioned "ICast Automated Projected Tracking" relates to an assignment and tracking system that enables coordinating and tracking field services and field worker schedules at a centralized system yielding timely completion. This is an online data warehouse for field workers' performance history as well as store specific information. However, we note that the stored data relates to functions that occur after the labor determination has been performed. This determination step is not the claimed automatic determination of the amount of labor required. Thus, Appellant respectfully submits that the automatic determination of automatically determining an amount of labor needed is not disclosed in CMS.

## II. The Cited References Do Not Disclose Appellants "Fair Share"

Fair share, as it relates to the present specification and claims, relates to dividing the total cost of the labor involved to complete the reset among the various manufacturers whose products were involved in the reset. Fair share analysis is performed with respect to such factors as the store, the product, the labor required for resetting a particular product.

Appellants note that the Examiner states that "this determination of fair share amount of labor does not have a functional effect on any other limitation in the claim, as the scheduling of labor in the claim is not connected to the fair share determination." Therefore, the Examiner maintains that it would have been obvious to one of ordinary skill in the art at the time of the invention to "determine hours required for each worker

based on the fair share requirements in order to increase the usefulness of the tool in the market by having a tool comply with labor standards.”

Appellants respectfully submit that, as set forth for example in claim 26, fair share is used in computing the number of hours required for each of said manufacturers with respect to said store activity. The Examiner’s Answer fails to state how the cited references disclose determining a fair share of a total amount of labor needed to perform said store activity as a function of at least one of said store information, said product information, said labor information, and said labor requirements. Thus, a *prima facie* case of obviousness has not been established.

For the reasons set forth above and in Appellants’ Brief dated February 7, 2007, Appellants respectfully request that the Board order the withdrawal of the Examiner’s rejections.

Dated: August 6, 2007

Respectfully submitted,

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